

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOSEPH TETAK,

Petitioner,

v.

Case No. 2:21-cv-3903

Judge Edmund A. Sargus, Jr.

Magistrate Judge Elizabeth P. Deavers

**JAY FORSHEY, WARDEN, NOBLE
CORRECTIONAL INSTITUTION,**

Respondent.

OPINION AND ORDER

This matter is before the Court on Plaintiff's Application for Certificate of Appealability, which for the reasons set forth below is **DENIED**. (ECF No. 14.)

I.

Petitioner Joseph Tetak petitioned this Court for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner sought release from confinement imposed as part of the judgment of a state court in a criminal action. The Magistrate Judge issued a Report and Recommendation denying the Petition (ECF No. 10), which this Court adopted (ECF No.12) and entered judgement accordingly (ECF No. 13). Plaintiff now seeks to appeal the denial of his Petition and seeks a certificate from appealability ("COA") from this Court. (ECF No. 14.)

II.

A state prisoner seeking federal habeas corpus relief is not automatically entitled to appeal a district court's decision denying relief unless the district court issues a COA. 28 U.S.C. § 2253(c). A district court should issue or deny a COA "when it enters a final order adverse to

the applicant.” Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts.

To be entitled to a COA, a petitioner must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). The Sixth Circuit has also cautioned that “a court should not grant a certificate without some substantial reason to think that the denial of relief might be incorrect.” *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020).

III.

Here, the Magistrate Judge issued a well-reasoned Report and Recommendation, providing a thorough analysis of the petition. This Court adopted that Report, finding that the Magistrate Judge correctly decided the issues before her and that the Objection to her Report was not well taken.

The Report also concluded that “reasonable jurists would not disagree that Petitioner has failed to make a substantial showing of a violation of constitutional rights, Petitioner should not be granted a certificate of appealability and should not be permitted to proceed on appeal *in forma pauperis*.” (ECF No. 10 at 7.) This Court agrees with that conclusion and, for the same reasons stated in the Report and Recommendation and in this Court’s Opinion and Order adopting the Report, finds that reasonable jurists would not disagree that Petitioner has failed to make a substantial showing of a violation of constitutional rights.

IV.

For the reasons stated above, the Court **DENIES** Petitioner's Application for a COA.

(ECF No. 14.) This case remains closed.

IT IS SO ORDERED.

11/7/2022

DATE

s/Edmund A. Sargus, Jr.

EDMUND A. SARGUS, JR.

UNITED STATES DISTRICT JUDGE